

## 1. INTRODUCTION

This Request For Bid seeks bids from qualified organizations to provide Directional Underground Boring Services, located in Mississippi County in the State of Missouri, for a contract period from Date of Award through May 15, 2008 to the Missouri Highways and Transportation Commission (MHTC), and Missouri Department of Transportation (MoDOT). Each bid must be mailed in a sealed envelope to Ms. Leann Kottwitz, General Services Procurement Unit, P.O. Box 270, Jefferson City, Mo 65102, or hand-delivered in a sealed envelope to the General Services Procurement Office in the Highway and Transportation Building at 830 MoDOT Drive, Jefferson City, Missouri 65109. Bids must be returned to the office of Ms. Leann Kottwitz no later than **10:00 a.m., CDT, April 17, 2008**.

**MHTC reserves the right to reject any and all bids for any reason whatsoever.**

**NOTE: The Bidder must SIGN and RETURN this page with the bid.**

### BID

- (1) The Bidder shall provide firm, fixed prices to MHTC on the PRICING PAGE in accordance with the terms of this Request for Bid.
- (2) The Bidder agrees to provide the services specified herein at the firm, fixed prices stated on the Pricing Page, under the terms of this Request for Bid.

Authorized Signature of Bidder: \_\_\_\_\_  
Date of Bid: \_\_\_\_\_  
Printed or Typed Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Electronic Mail Address: \_\_\_\_\_  
\_\_\_\_\_

### ACCEPTANCE

This bid is accepted by MHTC.

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Date

## **1. INTRODUCTION AND GENERAL INFORMATION**

### **1.1 Introduction:**

1.1.1 This document constitutes a request for competitive, sealed bids for the provision of directional underground boring services as set forth herein.

1.1.2 Organization – This document, referred to as a Request for Bid (RFB), is divided into the following parts:

- 1) Introduction and General Information
- 2) Scope of Work
- 3) Bid Submission
- 4) Pricing Page
- 5) Terms and Conditions

1.1.3 **All questions must be directed to Leann Kottwitz at telephone number 573-751-3685, fax number 573-526-1218, or email at [Leann.Kottwitz@modot.mo.gov](mailto:Leann.Kottwitz@modot.mo.gov).**

1.1.4 NOTE TO RESPONDENT:

A vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The compliance to conduct business in the state shall include but may not be limited to: Registration of business name, vendors **MUST** submit a bid that correctly and accurately identifies the company name that is registered to do business in the State of Missouri. All vendors who are required to execute a contractual agreement **MUST** submit a copy of their certificate with the signed copy of the contract agreement before the purchasing department can proceed with MoDOT legal contract approval.

1.1.5 The Agreement between MHTC and the Bidder shall consist of: the RFB in its entirety and any written amendments thereto, the Bidder's response to the RFB and the post-award contract agreement signed between the parties. However, MHTC reserves the right to clarify any relationship in writing and such written clarification shall govern in case of conflict with the applicable requirements stated in the RFB or the Bidder's response. The Bidder is cautioned that its response shall be subject to acceptance by MHTC without further clarification."

## 2. SCOPE OF WORK

### CONTRACTUAL REQUIREMENTS:

#### 2.1 General Requirements:

- 2.1.1 The contractor shall provide directional underground boring services for the Missouri Department of Transportation (hereinafter referred to as the "MoDOT") for the designated areas specified elsewhere herein in Mississippi County in the State of Missouri, in accordance with the requirements and provisions stated herein. Unless otherwise stated, the contractor shall not deviate from the requirements stated herein.

#### 2.2 Specific Requirements:

- 2.2.1 The contractor shall provide the MoDOT with directional underground boring services which shall include, but not be limited to, the following:

- a. The contractor shall perform bores by the specified completion dates, which shall include any foreseen and/or unforeseen digging problems.
  - 1) The completion date for each bore specified herein is **May 15, 2008**.
  - 2) MoDOT reserves the right, at its sole discretion, to expand the scheduled completion date due to construction in the area, as it deems necessary.
- b. **The contractor shall furnish approximately one hundred (150) feet of 2" innerduct pipe with rope for the bore specified herein.**
- c. **The contractor shall ensure that all other underground utilities in the area are located, flagged and/or marked.**

- 2.2.2 The contractor shall understand and agree that directional underground boring services must be completed by the specified completion date(s).

#### 2.3 Insurance Requirements:

- 2.3.1 The contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and other employee benefit acts, from claims for damages because of bodily injury, including death, and from claims for damages to property which may arise out of or result from the contractor's operations under the contract, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by any of them.
- a. Such insurance shall be written for not less than any limits of liability specified as part of the contract, or required by law, whichever is the greater, and shall include contractual liability insurance as applicable to the contractor's obligations under the contract. Unless otherwise specified, insurance limits shall be as follows:
    - 1) Workmen's Compensation: Workers Compensation Insurance, including "Occupational Disease Act" requirements, must be maintained if required by law.
    - 2) Public Liability (includes property damage and personal injury):
      - i. Not less than \$400,000 for any one person in a single accident or occurrence.
      - ii. Not less than \$2,500,000 for all claims arising out of a single occurrence.

- 3) Special Hazard Insurance: As required.
- 4) Builder's Risk: Not less than the full Contract amount.

#### **2.4 Invoicing and Payment Requirements:**

- 2.4.1 The contractor shall submit, on the contractor's letterhead at the end of each month, an invoice in triplicate to the MoDOT for compensation due.
- 2.4.2 The contractor must submit all invoices for the services specified herein **by no later than thirty (30) calendar days after completion.**
- 2.4.3 The contractor shall be paid in accordance with the firm, fixed price specified on the Pricing Page of this document for all services performed satisfactorily, and performed in accordance with the contractual requirements specified herein. However, the contractor shall understand and agree that under no circumstance shall the contractor be paid in excess of the firm, fixed price stated on the pricing page of this document.
  - a. The contractor shall understand and agree that no partial payment shall be paid to the contractor for incomplete work.
- 2.4.4 Other than the payment specified above, no other payments or reimbursements shall be made to the contractor for any reason whatsoever.

#### **2.5 Other Contractual Requirements:**

- 2.5.1 General Wage Order: The contractor shall be required to comply with the General Wage Order as fixed by the Missouri Department of Labor and Industrial Relations, in effect as of the date of the issuance of the solicitation, for each affected craft and type of workmen in Mississippi County. The **General Wage Order #51** may be inspected at any District Office or at the Central Office in Jefferson City, MO.
  - a. The contractor shall submit notarized weekly payroll affidavit documentation included with the project request for payment. The successful vendor must provide a lien waiver from all material suppliers.
- 2.5.2 Collusion: The MoDOT monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.

### 3. BID SUBMISSION

#### 3.1 Bid, Guaranty, and Contract Bond:

- 3.1.1 Each bid shall be accompanied by a **Bid Bond, Certified Check, Cashier's Check or Bank Money Order payable to the Director of Revenue--Credit State Road Fund** for an amount equal to **Five (5) Per Cent of the amount of the BID** submitted, as a guarantee that the bidder, if awarded the contract, will furnish an acceptable performance and payment (**Contract Bond**) or a cashier's check, a bank money order or a certified check made payable to "**Director of Revenue--Credit State Road Fund**" in an amount equal to **One Hundred (100%) of the contract price**. If a BID BOND is used (in lieu of a certified check, cashier's check, or bank money order), it must be in the form provided and executed by the bidder as principal and by a surety company authorized to do business in the **State of Missouri as surety**. The agent executing the same on behalf of the surety company must attach a current **Power of Attorney setting forth his authority to execute the bond involved**.
- 3.1.2 Certified Checks, Cashier's Checks or Bank Money Orders of unsuccessful bidders will be returned as soon as the award is made. The checks or bank money orders of the successful bidder will be retained until the contract is executed and a satisfactory **Performance and Payment (Contract Bond)** is furnished. Bid Bonds will not be returned except on specific request of the bidder.
- #### 3.2 Failure to Execute Contract:
- 3.2.1 Failure to execute the contract and file acceptable performance payment (**Contract Bond**) or cashier's check, bank money order or certified check within **15 days** after the contract has been mailed to the bidder shall be just cause for the cancellation of the award and the forfeiture of the bid guaranty. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised and performed under contract or otherwise, as the Commission may decide. No contract shall be considered effective until it has been executed by all parties thereto.

#### 4. PRICING PAGE

- 4.1 Directional Underground Boring Services:** The bidder shall provide firm, fixed prices in the table below for providing the services in accordance with the provisions and requirements of this RFB. All costs associated with providing the required services specified elsewhere herein must be included in the stated prices.

Directional Underground Boring Services		
Line Item	Description	Contract Period - <i>Date of Award through May 15, 2008</i> <i>Firm, Fixed Price- Approximately 150 Feet</i>
001	Directional Underground Boring Services, as specified herein.  <i>Location: I-57, mile marker 9.6 in Mississippi County</i>	\$ _____  <i>Firm, Fixed Price, Per Foot</i>

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

ANTI-COLLUSION STATEMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS.

\_\_\_\_\_ being first

duly sworn, deposes and says that he is \_\_\_\_\_  
Title of Person Signing

of \_\_\_\_\_

\_\_\_\_\_  
Name of Bidder

that all statements made and facts set out in the bid for the above project are true and correct; and that the bidder (The person, firm, association, or corporation making said bid) has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such bid or any contract which may result from its acceptance.

Affiant further certifies that bidder is not financially interested in, or financially affiliated with, any other bidder for the above project.

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

## SIGNATURE AND IDENTITY OF BIDDER

The undersigned states that the correct LEGAL NAME and ADDRESS of (1) the individual Bidder, (2) each partner or joint venture (whether individuals or corporations, and whether doing business under a fictitious name), or (3) the corporation (with the state in which it is incorporated) are shown below; that (if not signing with the intention of binding himself to become the responsible and sole contractor) he is the agent of, and duly authorized in writing to sign for the Bidder or Bidders; and that he is signing and executing this (as indicated in the proper spaces below) as the bid of a

( ) sole individual                                      ( ) partnership                                      ( ) joint venture

( ) corporation, incorporated under laws of state of \_\_\_\_\_

Dated \_\_\_\_\_.

Name of individual, all partners,  
or joint ventures:

Address of each:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

doing business under the name of:

Address of principal place of business in Missouri

(If using a fictitious name, show  
this name above in addition  
to legal names)

(If a corporation, show its name above)

ATTEST:                      (SEAL)

Secretary

Title

(NOTE: If the Bidder is doing business under a FICTITIOUS NAME, the bid shall be executed in the legal name of the individual, partners, joint ventures, or corporation, with the legal address shown, and REGISTRATION OF FICTITIOUS NAME filed with the Secretary of

State, as required by Sections 417.200 to 417.230, RS Mo. If the Bidder is a CORPORATION NOT ORGANIZED UNDER THE LAWS OF MISSOURI, it shall procure a CERTIFICATE OF AUTHORITY TO DO BUSINESS IN MISSOURI, as required by Section 351.570 and following; RS Mo. A CERTIFIED COPY of such Registration of Fictitious Name or Certificate of Authority to do Business in Missouri shall be filed with the Missouri Highways and Transportation Commission, as required by the Standard specifications, Sec 102.6.6 and 102.6.7.



**DIRECTIONAL UNDERGROUND BORING SERVICES**

**BID BOND**

**KNOW ALL MEN BY THESE PRESENTS**, that we \_\_\_\_\_, as  
Principal and \_\_\_\_\_, as Surety are held and firmly bound  
unto the **STATE OF MISSOURI** (acting by and through the **Missouri Highways and Transportation  
Commission**) in the penal sum of:

\_\_\_\_\_ **Dollars**  
(\$ \_\_\_\_\_) to be paid to the **State of Missouri or to the Missouri Highways and  
Transportation Commission**, to be credited to the State Road Fund, the Principal and Surety binding themselves,  
their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this \_\_\_\_\_

**THE CONDITION OF THIS OBLIGATION** is such that:

**WHEREAS**, the Principal is submitting herewith a bid to the Missouri Highways and Transportation Commission  
for furnishing directional underground boring services as set out in the bid to which this bond is attached.

**NOW THEREFORE**, if the Missouri Highways and Transportation Commission shall accept the bid of the  
Principal and if said Principal shall properly execute and deliver to the Missouri Highways and Transportation  
Commission the contract and contract bond in compliance with the requirements of the bid, the specifications and  
the provisions of law, to the satisfaction of the Highways and Transportation Commission, then this obligation shall  
be void and of no effect, otherwise to remain in full force and effect.

In the event the said Principal shall, in the judgment of the Missouri Highways and Transportation Commission,  
fail to comply with any requirement as set forth in the preceding paragraph, then the State of Missouri acting  
through the Missouri Highways and Transportation Commission shall immediately and forthwith be entitled to  
recover the full penal sum above set out, together with court costs, attorney's fees and any other expense of  
recovery.

(SEAL)

\_\_\_\_\_  
Principal

By

\_\_\_\_\_  
Signature

(SEAL)

\_\_\_\_\_  
Surety

By

\_\_\_\_\_  
Attorney-in-Fact

**NOTE:** This bond must be executed by the **PRINCIPAL** and by a **CORPORATE SURETY**  
authorized to conduct surety business in the State of Missouri.

## PREFERENCE IN PURCHASING PRODUCTS

DATE: \_\_\_\_\_

The bidders attention is directed to Section 34.076 RSMo 2000 which gives preference to Missouri corporations, firms, and individuals when letting contracts or purchasing products.

Bids/Quotations received will be evaluated on the basis of this legislation.

All vendors submitting a bid/quotation must furnish ALL information requested below.

### FOR CORPORATIONS:

State in which incorporated: \_\_\_\_\_

### FOR OTHERS:

State of domicile: \_\_\_\_\_

### FOR ALL VENDORS:

List address of Missouri offices or places of business:

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### THIS SECTION MUST BE COMPLETED AND SIGNED:

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

BY (signature required): \_\_\_\_\_

Federal Tax I.D. #: \_\_\_\_\_ if no Federal Tax I.D. # - list Social Security #: \_\_\_\_\_

NOTE: For bid/quotation to be considered, the "Preference in Purchasing Products" form must be on file in the General Services (Procurement) Division and must be dated in the current calendar year.

## MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT

The bidder's attention is directed to the Missouri Domestic Products Procurement Act, Sections 34.350 to 34.359, RsMO, which requires all manufactured goods or commodities used or supplied in the performance of this contract or any subcontract to be manufactured or produced in the United States.

Section 34.355, RsMO, requires the vendor or contractor to certify his compliance with Section 34.353 and, if applicable, Section 34.359, RsMO, at the time of bidding **and** prior to payment. Failure to comply with Section 34.353, RsMO, during the performance of the contract **and** to provide certification of compliance prior to payment will result in nonpayment for those goods or commodities.

Section 34.353.2, RsMO, specifies that it does not apply where the total contract is less than Twenty-Five Thousand Dollars (\$25,000.00). If your total bid is Twenty-Five Thousand Dollars (\$25,000.00) or more, you **must** complete this form as directed below.

**Failure to complete and return this document with this bid will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis. Please read the certification appearing below on this form.**

☐ If all the goods or products specified in the attached bid which the bidder proposes to supply to the State shall be manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left.

☐ If only one item of any particular goods or products specified in the attached bid is manufactured or produced in the "United States" as defined in Section 34.350, RsMO, check the box at left and list the items (or item number) here:

☐ If any or all of the goods or products specified in the attached bid which the bidder proposes to supply to the State are **not** manufactured or produced in the "United States" as defined in Section 34.350, RsMO, then: (a) check the box at left; (b) list below, by item (or item number), the country other than the United States where each good or product is manufactured or produced; and (c) check the boxes to the left of the paragraphs below if applicable and list the corresponding items (or item numbers) in the spaces provided.

Item (or item number)	Location Where Item Manufactured or Produced

(attach an additional sheet if necessary)

☐ The following specified goods or products cannot be manufactured or produced in the United States in sufficient quantities or in time to meet the contract specifications. Items (or item numbers):

☐ The following specified goods or products must be treated as manufactured or produced in the United States, in accordance with an existing treaty, law, agreement, or regulation of the United States, including a treaty between the United States and any foreign country regarding export-import restrictions or international trade. Items (or item numbers):

### CERTIFICATION

By submitting this document, completed as directed above, with a bid, the bidder certifies under penalty of making false declaration (Section 575.060, RsMO) that the information contained in this document is true, correct and complete, and may be relied upon by the State in determining the bidders qualifications under and in compliance with the Missouri Domestic Products Procurement Act.

**The bidder's failure to complete and return this document with the bid as directed above will cause the State to presume the manufactured goods or products listed in the bid are not manufactured or produced in the United States, and the bid will be evaluated on that basis pursuant to Section 34.353.3(2), RsMO.**

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**STANDARD SOLICITATION PROVISIONS**

- a. The Missouri Department of Transportation (MoDOT) reserves the right to reject any or all bids/quotes/proposals, and to accept or reject any items thereon, and to waive technicalities. In case of error in the extension of prices in the bid/quote/proposal, unit prices will govern.
- b. All bids/quotes/proposals must be signed with the firm name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
- c. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown, within the State of Missouri.
- d. Time of delivery is a part of the consideration and, if not otherwise stated in the solicitation documents, must be stated in definite terms by the Bidder/Offeree and must be adhered to. If time varies on different items, the Bidder/Offeree shall so state.
- e. If providing bids/quotes/proposals for commodities, the Bidder/Offeree will state brand or make on each item. If bidding or proposing other than the make, model or brand specified, the manufacturer's name, model number or catalog number must be given.
- f. **For bids/proposals of \$25,000 or more, no bids/proposals by telephone, telegram or telefax will be accepted.**
- g. The date specified for the returning of bids/quotes/proposals is a firm deadline and all bids/quotes/proposals must be received at the designated office by that time. The Department does not recognize the U.S. Mail, Railway Express Agency, Air Express, or any other organization, as its agent for purposes of accepting proposals. All proposals arriving at the designated office after the deadline specified will be rejected.

**GENERAL TERMS AND CONDITIONS**

**General Performance**

- a. This work is to be performed under the general supervision and direction of the Missouri Department of Transportation (MoDOT) and, if awarded any portion of the work, the Contractor agrees to furnish at his own expense all labor and equipment required to complete the work, it being expressly understood that this solicitation is for completed work based upon the price(s) specified and is not a solicitation for rental of equipment or employment of labor by MoDOT, and MoDOT is to have no direction or control over the employees used by the Contractor in performance of the work.

**Deliveries**

- a. Unless otherwise specified on the solicitation documents or purchase order, suppliers shall give at least 24 hours advance notice of each delivery. Delivery will only be received between the hours of 8:00 a.m. to 3:00 p.m., Monday through Friday. Material arriving after 3:00 p.m. will not be unloaded until the following workday. No material will be received on Saturday, Sunday or state holidays.
- b. If the prices bid herein include the delivery cost of the material, the Contractor agrees to pay all transportation charges on the material as FOB - Destination. Freight costs must be included in the unit price bid and not listed as a separate line item.
- c. Any demurrage is to be paid by the Contractor direct to the railroad or carrier.

**Nondiscrimination**

- a. The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- b. All solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of the Contractor's obligations under this contract and the Regulations, will be relative to nondiscrimination on the grounds of race, color, or national origin.
  - 1) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, MoDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
    - i. withholding of payments to the Contractor under the contract until the Contractor complies, and/or,
    - ii. cancellation, termination or suspension of the contract, in whole or in part.

**Contract/Purchase Order**

- a. By submitting a bid/quote/proposal, the Bidder/Offeree agrees to furnish any and all equipment, supplies and/or services specified in the solicitation documents, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the solicitation documents, amendments thereto, and/or Best and Final Offer (BAFO) request(s) with any changes/additions, (2) the Contractor's proposal and/or submitted pricing, and (3) the MHTC's acceptance of the proposal and/or bid by purchase order or post-award contract.
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the Contractor must receive a properly authorized purchase order and/or notice to proceed.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the Contractor and the duly authorized representative of the MHTC, by a modified purchase order prior to the effective date of such modification. The Contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

**Subcontracting**

- a. It is specifically understood that no portion of the material or any interest in the contract, shall be subcontracted, transferred, assigned or otherwise disposed of, except with the written consent of MoDOT. Request for permission to subcontract or otherwise dispose of any part of the work shall be in writing to MoDOT and accompanied by documentation showing that the organization which will perform the work is particularly experienced and

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equipped for such work.

- b. Consent to subcontract or otherwise dispose of any portion of the work shall not be construed to relieve the Contractor of any responsibility for the production and delivery of the contracted work and the completion of the work within the specified time.
- c. All payments for work performed by a subcontractor shall be made to the Contractor to whom the contract was awarded and the purchase order issued.

**Applicable Laws and Regulations**

- a. The contract shall be construed according to the laws of the State of Missouri. The Contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract.
- b. The Contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Prior to the issuance of a purchase order and/or notice to proceed, the Contractor may be required to submit to MoDOT a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
  - 1) Prior to the issuance of a purchase order and/or notice to proceed, all **out-of-state** Contractors **providing services** within the state of Missouri must submit to MoDOT a copy of their current Transient Employer Certificate from the Department of Revenue, in addition to a copy of their current Authority Certificate from the Secretary of State of the State of Missouri.
- c. The exclusive venue for any legal proceeding relating to or arising, out of the contract shall be in the Circuit Court of Cole County, Missouri.

**Executive Order**

- a. The Contractor shall comply with all the provisions of Executive Order 07-13, issued by the Honorable Matt Blunt, Governor of Missouri, on the sixth (6<sup>th</sup>) day of March, 2007. This Executive Order, which promulgates the State of Missouri's position to not tolerate persons who contract with the state engaging in or supporting illegal activities of employing individuals who are not eligible to work in the United States, is incorporated herein by reference and made a part of this Agreement.
  - 1) "By signing this Agreement, the Contractor hereby certifies that any employee of the Contractor assigned to perform services under the contract is eligible and authorized to work in the United States in compliance with federal law."
  - 2) In the event the Contractor fails to comply with the provisions of the Executive Order 07-13, or in the event the Commission has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States in violation of federal law, the Commission reserves the right to impose such contract sanctions as it may determine to be appropriate, including but not limited to contract cancellation, termination or suspension in whole or in part or both.
  - 3) The Contractor shall include the provisions of this paragraph in every subcontract. The Contractor shall take such action with respect to any subcontract as the Commission may direct as a means of enforcing such provisions, including sanctions for noncompliance.

**Preferences**

- a. In the evaluation of bids/quotes/proposals, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, RSMo. 34.076 and 34.350 to 34.359, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
  - 1) If attached, the document entitled **"PREFERENCE IN PURCHASING PRODUCTS"** should be completed and returned with the solicitation documents.
  - 2) If attached, the document entitled **"MISSOURI DOMESTIC PRODUCTS PROCUREMENT ACT"** should be completed and returned with the solicitation documents. **Applies if bid is Twenty-Five Thousand Dollars (\$25,000.00) or more.**
- c. In the event of a tie of low bids, the MHTC reserves the right to establish the method to be used in determining the award

**Remedies and Rights**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the MHTC of any existing or future right and/or remedy available by law in the event of any claim by the MHTC of the Contractor's default or breach of contract.
- b. The Contractor agrees and understands that the contract shall constitute an assignment by the Contractor to the MHTC of all rights, title and interest in and to all causes of action that the Contractor may have under the antitrust laws of the United States or State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or produced by the Contractor in the fulfillment of the contract with the MHTC.

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- c. In the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request MoDOT to enter into such litigation to protect the interests of the MHTC, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Cancellation of Contract**

- a. The MHTC may cancel the contract at any time for a material breach of contractual obligations or for convenience by providing the Contractor with written notice of cancellation. Should the MHTC exercise its right to cancel the contract for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Contractor.
- b. If the MHTC cancels the contract for breach, the MHTC reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the MHTC deems appropriate and charge the Contractor for any additional costs incurred thereby.

**Bankruptcy or Insolvency**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the Contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assigned the benefit or creditors, the Contractor must notify MoDOT immediately. Upon learning of any such actions, the MHTC reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the Contractor responsible for damages.

**Inventions, Patents, and Copyrights**

- a. The Contractor shall defend, protect, and hold harmless the MHTC, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

**Inspection and Acceptance**

- a. No equipment, supplies, and/or services received by MoDOT pursuant to a contract shall be deemed accepted until MoDOT has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The MHTC reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The MHTC's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the MHTC may have.

**Warranty**

- a. The Contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by MoDOT, (2) be fit and sufficient for the purpose expressed in the solicitation documents, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the MHTC's acceptance of or payment for said equipment, supplies, and/or services.

**Status of Independent Contractor**

- a. The Contractor represents itself to be an independent Contractor offering such services to the general public and shall not represent itself or its employees to be an employee of the MHTC. Therefore, the Contractor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save and hold the MHTC, its officers, agents and employees harmless from and against any and all losses (including attorney fees) and damage of any kind related to such matters.

**Indemnification**

- a. The Offeror shall defend, indemnify and hold harmless the Commission, including its members and department employees, from any claim or liability whether based on a claim for damages to real or personal property or to a person for any matter relating to or arising out of the Offeror's performance of its obligations under this Agreement.